

## REMARKS

### 1. Formal Matters

#### a. Status of the Claims

Claims 1-20 are pending in this application. Claims 1-20 are hereby cancelled without prejudice to pursuing these claims in a continuing application. Claim 21 is new. Upon entry of these amendments, claim 21 is pending and under active consideration. Applicants respectfully request entry of the amendments and remarks made herein into the file history of the present application.

#### b. Amendments to the Claims

New claim 21 recites a nucleic acid consisting of 18 to 120 nucleotides, support for which may be found throughout the application including claims 1-3 as originally filed. New claim 21 also recites that the sequence of the nucleic acid may comprise (a) at least 18 consecutive nucleotides of SEQ ID NO: 3760, support for which may be found in the application as originally filed including at claim 1; (b) an RNA equivalent of (a), support for which may be found in the application as originally filed including at claim 1; (c) a sequence at least 42/63 identical to (a) or (b), support for which may be found at claim 1 and the application as originally filed, which show that VGR389 (represented by SEQ ID NO: 3760) encodes VGAM147 (represented by SEQ ID NO: 133), and at Table 1, lines 927-933 which shows that (i) the sequence of SEQ ID NO: 133, of which the first half is a partial inverse of its second half as shown in Table 1, lines 927-933, is 63 nucleotides in length; and (ii) within the predicted hairpin formed by the nucleic acid of SEQ ID NO: 133, 42 complementary nucleotides are paired; or (d) the complement of any one of (a)-(c), support for which may be found at claim 1 and the application as originally filed which show that VGR389 encodes VGAMS 142, 143, 144, 145, 146, and 147, and Table 1 lines 892-898, 913-919, and 927-933 of the application as originally filed.

#### d. Elections/Restrictions

##### Groups I-VII

At pages 3-6 of the Office Action, the Examiner requires restriction to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-8, 11-12, and 14, drawn to a gene, a vector, a gene expression system, and a probe.
- II. Claims 9-10, drawn to a method of selectively inhibiting translation.
- III. Claims 13-14, drawn to a method and a system of selectively detecting expression.
- IV. Claims 15-17, drawn to an anti-viral substance.
- V. Claims 18-20, drawn to a method for an antiviral treatment.

Applicant elects without traverse Group I, which now is considered claim 21, drawn to an isolated nucleic acid.

**e. Sequence Restriction/Election Requirement Applicable to All Groups**

At page 6 of the Office Action, the Examiner requires restriction to a single disclosed gene/sequence. Applicant elects with traverse nucleic acids related to SEQ ID NO: 3760 for further prosecution.

The Examiner is permitted under 35 U.S.C. 121 to issue a restriction requirement between independent and distinct inventions. However, the Director has partially waived the requirements of 37 C.F.R. § 1.141 *et seq.* to permit a reasonable number of nucleotide sequences to be claimed in a single application. *See Examination of Patent Applications Containing Nucleotide Sequence*, 1192 O.G. 68 (November 19, 1996). It has been determined that normally ten sequences constitute a reasonable number for examination purposes absent an exceptional case. *See* MPEP 803.04.

The Examiner has failed to demonstrate that the claimed sequences are an exceptional case necessitating that the number of sequences to be selected be less than ten. Applicant respectfully submits that the Examiner is impermissibly disregarding the waiver of 37 C.F.R. § 1.141 *et seq.* Accordingly, Applicant respectfully requests reconsideration of the restriction requirement and the opportunity to elect ten sequences for further prosecution.

**f. Species Election**

At page 7 of the Office Action, the Examiner requires election one disclosed species from each of the following:

Species A: one disclosed target gene.

Species B: one neutralizing process among complementarily binding RNA and immunological neutralizing.

With respect to species A, Applicant elects without traverse target gene INHBA, which has the sequence of SEQ ID NO: 904. With respect to species B, Applicant elects without traverse complementarily binding RNA.

## **2. Conclusion**

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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